



NATIONAL BORDER PATROL COUNCIL

PROTECTING THOSE WHO PROTECT OUR BORDERS

MEMBER ADVISORY

COVID-19 and OWCP Claims for Agents

Below, and in the attached frequently asked questions (FAQ), you will learn what agents should do if you are exposed to, or test positive for, COVID-19. The most critical information can be found below, with more information in the FAQ.

Have you been exposed to COVID-19?

Each exposure is different, and not all exposures require you to quarantine at home. If you are exposed, you must explain, in great detail, to your supervisor the following (consult with a union rep if you need help):

- Were you, others around you, and the sick person wearing PPE or facial coverings?
- How much time did you spend around the sick person, and for how much of that time were you and the sick person wearing PPE or a facial covering?
- What level of contact did you have with the sick person? Did you eat around each other? Were masks on and off throughout the exposure time? Was the sick person coughing?

These are only examples of the information your supervisor needs to know to make a risk decision. If they don't ask these questions, make sure you provide this and any other relevant information.

If you had a high-risk exposure, you should be placed on weather and safety leave *if you have no symptoms*. You cannot use weather and safety leave if you are sick, so you must use sick leave until and if you test positive for COVID-19.

If you had an exposure, consider getting tested, especially if you develop symptoms, **but don't test too early** – most doctors recommend waiting four to five days to get tested. Otherwise, you could test too early and test negative when you are actually sick.

Have you tested positive for COVID-19?

Employees who contract COVID-19 in the course of their duties can be covered by OWCP for treatment and any time away from work. DOL understands that we can't know when and where we got COVID, *so we don't have to prove it*. **If you test positive for COVID-19 and you believe you could have gotten it at work, fill out a CA-1.** Unless you have not been at work for weeks, it's very likely you did indeed get it at work. *Even if your family member tests positive first, it's possible you gave it to them, but they showed symptoms first.* Ask your supervisor that you be promptly counseled regarding your workers' compensation benefits, entitlements, and responsibilities under Article 18 of the CBA.

Register and fill out a CA-1 on <http://www.ecomp.dol.gov>. In Box 10 (date of injury), use your best estimate when you believe you were exposed to COVID-19 at work. If you don't know, use your last workday before you tested positive. In Box 13, write something about your job that could have led to potentially being exposed to COVID-19. For example, you could describe: 1) processing and having close contact with numerous illegal aliens; 2) being in a confined space with several employees for several hours; 3) arresting a group of illegal aliens who weren't wearing masks; 4) working at a traffic checkpoint with numerous travelers; and 5) any other work-related situation that could lead to contracting COVID-19.

If a supervisor claims that you must prove when and where you got COVID, tell them to show you the policy requiring this. If this happens, escalate things to a WC or PAIC/DPAIC and get with a station union representative. Finally, **make sure you elect to use COP in Box 15.** The first day of COP is your first full day away from work because of your symptoms – not the day you tested or got your test results.

Employees are highly encouraged to refer to the attached frequently asked questions (FAQ) for more information.

1. Question: My supervisor said that I had a medium-risk exposure and that I must return to work. Is that correct?

Answer: Maybe. Since each exposure has different facts, you have to make sure your supervisor has all of the details. If you were not in close contact with someone for more than 15 minutes over 24 hours,¹ then no, it's likely not a high-risk exposure. However, it's rarely a black and white issue. Two people wearing facial coverings in a vehicle for an entire shift are still in a high-risk situation because facial coverings can only do so much. However, you need to make sure you properly articulate this and all other relevant facts to your supervisor so they can make an informed decision. If you disagree with the level of risk determined by your supervisor, escalate the issue and be prepared to provide more details.

2. Question: I was exposed to someone who had COVID-19, or I believe I might have been exposed to someone, but I'm not sure if they have COVID-19 – should I fill out a Form CA-1?

Answer: Generally, no, you should not pre-emptively fill out a CA-1 before you test positive. DOL will deny and close out this claim because there is no evidence of you contracting COVID-19. Employees sometimes fill out a CA-1 “just in case” as a means to document an incident. You don't need a CA-1 for this – send an email to your supervisor (cc yourself) describing the incident (e.g., the date/time/place you were exposed, describe a detainee coughing in your face, etc.). If you test positive, your supervisor can refer to your email as a means of confirming a particular incident took place.

3. Question: Do I have to prove when and where I contracted COVID-19 at work to qualify for COP?

Answer: No, you do not. Before COVID-19, DOL required that you prove an illness was contracted at work. However, because of the way COVID-19 spreads, DOL changed their rules in March 2020.² Instead of a CA-2, they decided employees should fill out a CA-1. They took away the requirement to prove how an employee contracted COVID-19, but only for employees in specific high-risk job categories; Border Patrol agents fall into this category.

For most cases, DOL requires only a positive COVID-19 test result (the actual lab test, not an email saying positive) and confirmation that you are a Border Patrol agent. They opted for this procedure because it is “difficult to determine the precise moment and method of virus transmission.”³

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

² FECA Bulletin No. 20-05, March 31, 2020

<https://www.dol.gov/agencies/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2020-2024>

³ <https://www.dol.gov/agencies/owcp/dfec/InfoFECACoverageCoronavirus>

4. Question: I have symptoms of COVID-19, so I'm going to get tested. Do I have to use my own sick leave?

Answer: Until you receive a positive diagnosis, yes. However, as soon as you test positive for COVID-19, you can fill out a Form CA-1 as described above and retroactively apply COP back to the first full day you were away from work because of your symptoms.

5. Question: What if I have symptoms, but I test negative for COVID-19?

Answer: You cannot use COP without a positive COVID-19 test. There have been instances of people receiving a false negative, so you might want to consider getting a second test. In the end, if you never test positive for COVID-19, then you will remain on sick leave just like if you had any other illness.

If you later test positive in an antibody test and your doctor believes you got it at work, you can still submit a CA-1, but you will not be eligible for COP unless you submit the CA-1 and medical documentation within 30 days of first becoming sick. Since this is not as simple as having a clear-cut positive test result, you will need to submit additional medical evidence.

6. Question: I was tested, and the doctor said I'm "COVID-19 probable" – now what?

Answer: The chances are likely that your doctor or the health authority will tell you to quarantine – this means the evidence has ruled out other illnesses and that you likely have COVID-19.⁴ If you have symptoms, you will need to use sick leave because you cannot use COP until you test positive. However, consider talking to your doctor about scheduling an antibody test. DOL will accept the results of an antibody test, as long as your doctor can link the illness to your symptoms and "probable" diagnosis, and then you can use your high-risk designation with DOL to submit a CA-1. However, to have access to COP, you must submit the CA-1 within 30 days of first becoming sick.

7. Question: Can my supervisor ask me questions about my family, including if any of them have COVID-19 or symptoms associated with COVID-19?

Answer: No. The Genetic Information Nondiscrimination Act (GINA) "prohibits employers from asking employees medical questions about family members." However, GINA "does not prohibit an employer from asking employees whether they have had contact with *anyone* diagnosed with COVID-19 or who may have symptoms associated with the disease."⁵ So while they can ask, "have you had contact with someone who has COVID-19?" they cannot ask if your wife or child, for example, has COVID-19. If asked, tell the supervisor you have been exposed to someone who tested positive and the circumstances surrounding

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/faq-surveillance.html>

⁵ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

the exposure so they can make the appropriate determination.

8. Question: Should I try to figure out when and where I contracted COVID-19?

Answer: No, DOL determined it is “difficult to determine the precise moment and method of virus transmission” and they “will accept that the exposure to COVID-19 was proximately caused by the nature of the employment.”³

If you try to guess where you contracted COVID-19, perhaps by explaining that a family member or friend has it, the agency will include that in their reports and could try to use it to controvert your OWCP claim. There have been several instances of this happening, but if actual medical doctors say we can never definitively tell when or where someone got COVID-19, then there’s no chance a supervisor or manager in the U.S. Border Patrol can figure it out. Trying to guess where you got COVID-19 will only unnecessarily complicate things.

9. Question: Do I have to wait for OWCP to accept my claim before I can use COP?

Answer: No, COP goes into effect as soon as you submit a CA-1, starting with the first full day you were out of work because of your illness. Employees are “entitled to receive COP when he or she is absent from work due to disability or medical treatment,” as COP is intended “to avoid interruption of the employee’s income while the case is being adjudicated.”⁶ You must submit a copy of the lab test results showing you tested positive.

Put another way, what do your supervisors do when an agent breaks an ankle on duty? Do they make them use their sick leave while waiting for OWCP to accept the claim? No, they put them on COP right away – it’s no different with COVID-19. Some supervisors have struggled with this concept, so check your T&A to make sure everything is coded correctly.

If the claim is later denied, any COP used may have to be converted back to sick leave.

10. Question: I tested positive for COVID-19 and filled out a CA-1. Do I automatically get 45 days off via COP?

Answer: You have *up to* 45 days of COP, but you are entitled to only the number of days needed to recover from the effects of COVID-19. Most people are permitted to return to work within 14 days, provided their symptoms have subsided and they feel better. However, there are some cases in which an employee is sick for an extended period. COP is used in the same fashion as someone who had a traumatic injury at work and needed additional time to heal. After the 45 days of COP are used, the employee can use LWOP or leave and request compensation via a Form CA-7.

⁶ DOL Publication CA-810, Section 5-1

11. Question: My supervisor said they would not submit my CA-1 because they don't believe I got COVID-19 at work. Can they do that?

Answer: No. According to 20 CFR § 10.110, the agency is required to send the CA-1 to OWCP within ten working days after receipt from the employee. The supervisor does not have the authority (or the training) to determine if a CA-1 should be approved, as this authority lies solely with OWCP. If a supervisor refuses to forward the CA-1, contact a union representative so a grievance can be filed or otherwise addressed.

12. Question: Did weather and safety leave expire? My supervisor said it expired on December 31, 2020.

Answer: Weather and safety leave did not expire, but the 80 hours of paid sick leave under the Families First Coronavirus Response Act (AKA COVID leave) did expire at the end of 2020. The expiration of the FFCRA should not affect most agents, as COP will likely be the most-used form of absence from work.

Weather and safety leave remains an option for those who have experienced a high-risk exposure but do not have symptoms of COVID-19.⁷

13. Question: Will DOL accept a COVID-19 diagnosis from a doctor who I contacted via telehealth?

Answer: Yes, telehealth is a convenient way to speak with a doctor, particularly if it's difficult to get an appointment with your primary care physician – DOL encourages its use.⁸

14. Question: At any point in time, can a supervisor order me to return to work if I am on COP due to COVID-19 because they believe I am no longer contagious?

Answer: No. DOL has determined that termination of COP under these circumstances requires a physician to release you to full or limited duty.⁹ Additionally, if you are not using COP, you cannot be ordered to go back to work if you are under enforceable quarantine orders or incapacitated for the performance of duties (i.e., you are still sick).

To put it in other terms, if you have the flu or some other illness, does the agency make you return to work after a certain number of days, even if you are still sick? No, you return to work when the illness no longer incapacitates you.

⁷ <https://www.chcoc.gov/sites/default/files/Coronavirus%20Memo%20Attachment.pdf>

⁸ FECA Bulletin No. 21-02, October 22, 2020

<https://www.dol.gov/agencies/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2020-2024>

⁹ 20 CFR § 10.222

15. Question: If I'm on COP and cannot return to work without a doctor's approval, then what sort of paperwork do I need?

Answer: For typical workplace injuries, a doctor fills out a Form CA-17 and indicates if an employee can return to work, and if so, what restrictions exist, if any; the same requirement exists for COVID-19. However, employees have some options.

If you tested with a doctor, ask the doctor for a note indicating when you can return to work. If you are still sick when that time expires, you will need to talk to your doctor again to determine if you require additional treatment.

If you test at a mobile testing site and get your lab test results via email or text message, ask the testing company for some documentation indicating when you can return to work. You could also show the test results to your primary care physician or another doctor via telehealth and ask them to write a note describing when you can return to work.

Some employees are contacted by a county health authority and will be told when they can return to work after some number of days – ask the health authority for a note indicating this.

Bottom line: you will need documentation, **signed by a doctor (not a physician's assistant or nurse practitioner)**, indicating when you can return to work, whether that's a note provided to you on the day you get your test results or after a follow-up visit with your doctor. Regardless, it is your responsibility to obtain this documentation in a timely fashion. If you fail to do so or DOL believes you are trying to remain on COP while no longer sick, DOL might deny some or all of your COP.

Your supervisor might not be aware of this requirement because so far, CBP has mistakenly not been following DOL's requirements. If they insist that you must return to work without approval from a doctor, show them this document and have them consult with an ICS or ICC and contact a union rep promptly – **do not get yourself into an insubordination situation.**

16. Question: My county told me that I am under quarantine orders and may not leave my house until a specific date under penalty of law. However, my supervisor called and said that I must return to work before that date. What do I do?

Answer: Make sure your supervisor is aware of the quarantine order and understands the penalties you might incur for violating it. If the supervisor insists that you return to work, call the county health authority, explain that your supervisor insists that you violate the order, and ask for their advice. Notify a union representative so they can confirm that the supervisor does indeed want you to violate the county's quarantine order so the union can take the appropriate action.

Some counties have issued exemptions or made exceptions for law enforcement officers and other first responders. If your county does have a first responder exemption or is

making an exception for you as a Border Patrol Agent, ensure the health authority knows if you are still sick or if your family members are sick.

17. I work for the U.S. Border Patrol, but I’m not an agent (e.g., MSS, mechanic, analyst, etc.), and I tested positive for COVID-19. Will I have to show evidence that I contracted it at work if I file a Form CA-1?

Yes, the normal rules about providing medical evidence for an illness still apply to those employees who do not work in a position designated by DOL as “high-risk.” DOL will require the employee to “provide a factual statement and any available evidence concerning exposure.” An employee not in a high-risk occupation is still eligible for COP, provided the CA-1 is filed within 30 days of becoming sick, and DOL ultimately approves the claim.¹⁰

You should be placed on COP as soon as you test positive and then retroactively apply COP to the first full day away from work because of your illness. However, you will be required to provide medical evidence of your illness, subject to DOL approval. If DOL denies your claim, any COP used may have to be converted back to sick or annual leave. Ensure that you provide thorough evidence from a doctor (not a physician’s assistant or nurse practitioner) that definitively explains why they believe it is most likely that you contracted COVID-19 at work.

Make sure your supervisor knows about any on-duty circumstances during which you think you were exposed to COVID-19. The agency will be required to explain whether they support or controvert your claim, so if they know what happened, it should make the process run more smoothly.

Additional resources:

OWCP FECA COVID-19 resource page:

<https://www.dol.gov/agencies/owcp/dfec/InfoFECACoverageCoronavirus>

FECA COVID-19 Bulletins

<https://www.dol.gov/agencies/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2020-2024>

¹⁰ <https://www.dol.gov/agencies/owcp/dfec/InfoFECACoverageCoronavirus>